IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R. BASANT

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Bail Appl..No. 5439 of 2007(S)

CRIME NO.668/07 OF THODUPUZHA POLICE STATION

PETITIONERS/1ST & 2ND ACCUSED
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1. SHIHAB K.U., AGED 27 YEARS, S/O.UNUS,
KUMPAMKALLIL, ELAMDESOM P.O.,
VELLIYAMATTOM, THODUPUZHA.

2. SIRAJ, AGED 24 YEARS, S/O.IBRAHIM,
THOTTIPARAMBIL HOUSE, ELAMDESOM P.O.
VELLIYAMATTOM, THODUPUZHA.

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
SUB INSPECTOR OF POLICE, THODUPUZHA
POLICE STATION, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11/09/2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 5439 OF 2007

Dated this the 11th day of September, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1 and 2. Altogether, there are three accused persons. They face allegations, inter alia, under Secs.353 and 307 of the IPC and Sec.3 of the P.D.P.P. Act. The crux of the allegations against the petitioners is that they were present inside a lorry which was engaged in the activity of illicit transportation of river sand. When the de facto complainant, who was charged with the responsibility of detecting such crimes, attempted to intercept the vehicle, the lorry was deliberately hit on the rear of the vehicle in which the de facto complainant – a public servant, was travelling. Thereafter, when the said vehicle tried to overtake the lorry, deliberately the lorry was hit against the side of the car resulting in damage to the car. The prosecution alleges that the persons present inside the lorry

were all privy to the attempt to hit against the vehicle in which the officials were travelling. Their attempt was to interfere with the official discharge of duties of the officials and to do away with them. The petitioners are alleged to be the persons who were present inside the lorry at the relevant time when the offence was committed. Investigation is in progress. The petitioners apprehend imminent arrest. Originally, in the F.I.R. the petitioners are not named. In the course of investigation, their complicity has been ascertained by the Investigating Officer.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. Even assuming that they were present inside the vehicle at the relevant time, they cannot be mulcted with any liability for the overt acts allegedly committed by the driver of the vehicle. In this view of the matter, the petitioners cannot be made vicariously liable. They may be granted anticipatory bail as they do not deserve to suffer the trauma of arrest and detention.

3. The learned Public Prosecutor opposes the application vehemently. The learned Public Prosecutor submits that there are no circumstances warranting or justifying the invocation of

the extraordinary equitable discretion under Sec.438 of the Cr.P.C. Any such direction given to the petitioners would impede and hamper the smooth course of investigation. The petitioners have to be arrested and interrogated. Their complicity will have to be ascertained. Permitting them to arm themselves with an order of anticipatory bail would seriously affect the efficacy of the investigation. The petitioners may be directed to resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate having jurisdiction. Anticipatory bail may not be granted to the petitioners, it is prayed.

4. I have considered all the relevant inputs. I find merit in the opposition by the learned Public Prosecutor. The exercise of weighing the materials in golden scales cannot obviously be performed at this stage. The materials clearly indicate that the petitioners were also present inside the vehicle when the overt acts were committed. I am satisfied that there are no features in this case which would justify the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C.

5. In the result, this bail application is dismissed; but with the observation that if the petitioners surrender before the

Investigating Officer or the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge